



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2021-0244; FRL-10022-55-Region 7]**

**Air Plan Approval; Nebraska; Revisions to Title 129 of the Nebraska Administrative Code; Chapter 39 Visible Emissions from Diesel-powered Motor Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on July 16, 2020. This proposed action will amend the SIP to revise title 129 of the Nebraska Administrative Code by removing a portion of the SIP that addresses visible emissions from diesel-powered motor vehicles. Visible emissions from diesel-powered motor vehicles are addressed in the state statute. Therefore, these proposed revisions remove duplicative language that is redundant to the state statute. The proposed revisions do not substantively change any existing statutory or regulatory requirement or impact the stringency of the SIP or air quality nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2021-0244 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: [donohue.allie@epa.gov](mailto:donohue.allie@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. Written Comments**

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0244, at <https://www.regulations.gov>. Once submitted,

comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. What is Being Addressed in this Document?**

The EPA is proposing to amend Nebraska's SIP to include revisions to title 129 of the Nebraska Administrative Code. The EPA is proposing to approve revisions to the Nebraska SIP submitted by the State of Nebraska on July 16, 2020. Specifically, the EPA is proposing to amend the Nebraska SIP by removing a portion of the SIP as follows: Title 129. Chapter 39. Visible Emissions from Diesel-powered Motor Vehicles. EPA is proposing approval of these revisions as they do not substantively change any existing statutory or regulatory requirement. These revisions do not impact the stringency of the

SIP or air quality.

Nebraska statutes 60-6,363, 60-6,364, 60-6,365, and 60-6,367 continue to provide the state of Nebraska the authority to use smokemeter tests and enforce against excessive opacity from diesel powered motor vehicles.<sup>1</sup> Nebraska statute 60-6,363 defines diesel-powered motor vehicle, motor vehicle, smoke, smokemeter, opacity, and smoke control systems. Nebraska Statute 60-6,364 lists exceptions to the definition of diesel-powered motor vehicles.

Title 129, Chapter 39 states, "No person shall operate a diesel-powered motor vehicle on any public street or highway in such a manner that smoke discharged from the exhaust is of a shade or density equal to or darker than that designated as No. 1 on the Ringelmann Chart or an equivalent opacity of twenty percent (20%) for ten (10) consecutive seconds or longer." Nebraska statute 60-6,365 has the same requirements with the exclusion of the phrase, "public street." EPA finds that this term does not impact the stringency of the SIP. Title 129. Chapter 39 also states, "A suspected violator may demand that the suspected vehicle be tested by an approved smokemeter prior to a trial on the alleged violation," which is also listed in Nebraska statute 60-6,367 verbatim. Title 129. Chapter 39 states, "smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the Director to conduct such tests, and (b) by installing an

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<sup>1</sup> Nebraska state statutes can be found at <https://nebraskalegislature.gov/laws/browse-chapters.php?chapter=60>.

approved smokemeter on the exhaust pipe and operating the suspected vehicle in a manner similar to the manner of operation at the time of the alleged violation." Nebraska statute 60-6,367 repeats this statement but replaces the phrase "in a manner similar to the manner of operation" with the phrase "at engine revolutions per minute equivalent to the engine revolution per minute." EPA finds that this change in phrasing does not impact the stringency of the SIP.

Nebraska statutes 60-6,363, 60-6,364, 60-6,365, and 60-6,367 will continue to provide Nebraska the authority to use smokemeter tests and regulate visible emissions from diesel-powered motor vehicles. The SIP revision being proposed for approval by this action removes a redundant regulation from the SIP and does not have an adverse effect on air quality in Nebraska.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of this SIP revision from September 28, 2019, to November 6, 2019, and held a public hearing on November 7, 2019. In a letter to the state dated November 7, 2019, the EPA stated that the agency "has no comment on the proposed repeal of this regulation." EPA further recommended that NDEE include a justification that the

rule is redundant to state statute. The SIP revision meets the substantive requirements of the CAA, including section 110 and implementing regulations.

#### **IV. What Action is the EPA Taking?**

The EPA is proposing to amend the Nebraska SIP by approving the State's request to remove Title 129 Section 39. Visible Emissions from Diesel-powered Vehicles. The removal of this portion of the SIP will ensure consistency between state and federally-approved rules. The EPA has determined that these changes will not adversely impact air quality because the regulation duplicates the State's statute, which applies in the same jurisdiction.

The EPA is processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **V. Incorporation by Reference**

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Nebraska Regulations from the Nebraska State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

#### **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and

applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Particulate matter.

Dated: \_\_\_\_\_

April 15, 2021.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart CC-Nebraska**

2. In §52.1420, the table in paragraph (c) is amended by removing the entry “129-39” under the heading “Title 129-Nebraska Air Quality Regulations”.

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